FILED
JUL 18 1966
JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1965

No. 249

WYATT TEE WALKER, MARTIN LUTHER KING, JR., RALPH ABERNATHY, A. D. KING, J. W. HAYES, T. L. FISHER, F. L. SHUTTLESWORTH and J. T. PORTER,
Petitioners,

vs.

CITY OF BIRMINGHAM, a Municipal Corporation of the State of Alabama,
Respondent.

BRIEF

Of Respondent in Opposition to Petition for Writ of Certiorari.

J. M. BRECKENRIDGE,
EARL McBEE,
WILLIAM C. WALKER,
All at 600 City Hall,
Birmingham, Alabama 35203,
Attorneys for Respondent.

ST. LOUIS LAW PRINTING CO., INC., 415 N. Eighth Street. CEntral 1-4477.

INDEX.

Cases Cited.

Statutes Cited.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1965.

No. .....

WYATT TEE WALKER, MARTIN LUTHER KING, JR., RALPH ABERNATHY, A. D. KING, J. W. HAYES, T. L. FISHER, F. L. SHUTTLESWORTH and J. T. PORTER,
Petitioners,

vs.

CITY OF BIRMINGHAM, a Municipal Corporation of the State of Alabama,
Respondent.

BRIEF

Of Respondent in Opposition to Petition for Writ of Certiorari.

STATEMENT IN OPPOSITION TO JURISDICTION.

The case was decided by the State Supreme Court on a question of state procedure not reaching the constitutional question presented by petitioners. No jurisdiction is in this case vested under 28 U. S. C. 1257 (3) on the theory of deprivation of constitutional rights of petitioners.

QUESTIONS PRESENTED.

I.

Whether the State Supreme Court properly invoked the doctrine that a court of general jurisdiction having full jurisdiction over the parties and with equity jurisdiction to grant injunctions, and having done so in a controversy over which it had jurisdiction to examine into and make a final determination, may punish one in criminal contempt who wilfully, flagrantly, intentionally flouted and defiantly violated such injunction without making any effort to dissolve or discharge such injunction in orderly process of law.

II.

Whether in a collateral certiorari proceeding one who, without resorting to the lawful means available to test the authority of such court, has arrogated unto himself the right to contemptuously defy its order, and in the same defiance has openly avowed his intent to violate it and all other laws which he may decide are unjust, may nevertheless be entitled by petition for certiorari to reverse his conviction for criminal contempt rendered in a proceeding in which he has been granted a full hearing, with no failure to comply with procedural requirements: on the alleged invalidity of the injunction for vagueness; on the alleged invalidity of Sec. 1159 of the City Code of Birmingham; on account of alleged exclusion of evidence; and on account of the alleged failure of evidence to show a violation of a particular one of the many prohibitions of the injunction, such particular prohibition which he denies having violated having been selected from the many by petitioner himself.

III.

Whether one, referred to in II above and IV below, who has succeeded in such conspiracy to violate such injunction by congregating a violent unruly mob, may claim reversal of his conviction for criminal contempt in violating such injunction on account of its alleged deprivation of constitutionally protected free expression.

IV.

Whether one who is a member of, or a member and also an officer in and leader of an organization, Southern Christian Leadership Conference (S. C. L. C.), or of its affiliate organization, Alabama Christian Movement for Human Rights (A. C. M. H. R.), against both of whom, their members and leaders, an injunction has been issued, and who is charged in the petition for rule nisi with conspiring with other members or leaders to defy and violate the injunction by a series of declarations and acts, may, after conviction for a single offense, isolate such declarations from such acts in consummation of the conspiracy, and claim for such declarations the constitutional immunity of free speech with effect of reversing the contempt conviction on certiorari proceedings.

V.

Whether or not two particular members of such organization (A. C. M. H. R.), J. W. Hayes and T. L. Fisher, both of whom attended, and one of whom (Hayes) appeared on its program on Saturday night, April 13th, when solicitation for and plans were made to congregate such unruly violent mob on Easter Sunday, April 14th, and both of whom having admitted knowing about the injunction and were aware that those participating in such event on April 14th would likely be arrested, and as to one of them (Hayes) an admission that he did so in the face of the injunction, are

entitled to reversal of their convictions for want of proof of intent to violate the injunction with notice or knowledge of its terms.

Alabama Constitution and Statutes Involved.

Sec. 144, Alabama Constitution, and Secs. 1038, 1039, Title 7, Alabama Code of 1940, are quoted and relied upon in the Alabama Supreme Court Opinion (Pet. Appendix, pages 19 (a), 20 (a), quoted herein, page 13, post).

STATEMENT.

In several major particulars we feel the Statement of Petitioners is inaccurate, incomplete, or otherwise misleading.

A. Some Points of Difference Concerning Evidence Heard on the Show Cause Hearing. To categorize as peaceful demonstrations the mobs gathered and the events occurring on April 12th and 14th, 1963, is to disregard the substantially undisputed evidence that a thousand congregated in the streets of the City on the first occasion and two thousand on the second occasion,[1] in which what appeared to be processions emanating from a church were joined by those marshalled into the marchers so as to in effect become a part of the procession filling the entire street and overflowing the sidewalks on either side and which became a howling, rock-throwing and violent mob injuring a news reporter, James Ware. [2](R. 224-226; pictures taken by him were introduced into evidence, R. 357-359, and certified to the Supreme Court of Alabama.) Some of these pictures depicting the group as it moved, together with other evidence of violence and damage to

---

[1] The size of the Sunday mob was estimated from about one to two thousand (Painter, R. 206; Ware, 224). Lieutenant Painter testified that the group was composed of those who came out of the church, together with those on the outside, which were directed by Rev. Wyatt Tee Walker to join the others and all moved off as one body (R. 206, 207, 220). The Good Friday March was estimated to include about 50, but the group following on the sidewalk and in the back were about one thousand to fifteen hundred by Inspector Haley's estimate (R. 139, 140).

[2] Page references are to the record before the Supreme Court of Alabama. We have been unable to reconcile these with the page references contained in the petition for certiorari, hereinafter referred to as "Pet." We find only 430 total pages in the record before the Alabama Supreme Court, but petitioners refer to page 522 (Pet., page 19). For example, the statement of counsel referred to on page 39 of the petition as being on pages 486-489 appears on pages 418 and 419 of the record available to us.

city property, are recited in the Alabama Supreme Court Opinion (Pet. Appendix 16 (a)).

That the mobs gathered were on each occasion under the control of the leaders, petitioners, is clearly shown by the evidence. The Good Friday March, including the marchers and crowd assembled outside the church, moved almost as a group. While some of the marchers were being arrested, Rev. Wyatt Tee Walker was instructing the crowd to move around the block (R. 199-200). On the occasion of the Easter Sunday mob, Rev. Wyatt Tee Walker not only directed those on the outside of the church to join the procession, but he also told Lieutenant Painter, "I guarantee I can control these people" (R. 207).

The gathering on these two days of the large crowds which became unruly mobs, and at least on the latter occasion also a violent one, was planned and promoted and the outgrowth and result of the many meetings beginning on the morning of April 11th when the press release in which these leaders proclaimed their defiance and their intent to violate the injunction and any other laws they might unilaterally deem to be unjust was released. This release is partially quoted on page 13 of the petition. Omitted is the sentence, "Just as in all good conscience **we cannot obey unjust laws, neither can we obey unjust use of the courts**" (R. 242, 415). On this occasion Rev. Martin Luther King made a statement, "We will continue on today, tomorrow, Saturday, Sunday, Monday and on" (R. 245).

On the evening of April 11th, Rev. Martin Luther King also made a statement at a meeting of the Alabama Christian Movement for Human Rights, an affiliate of Southern Christian Leadership Conference, "Injunction or no injunction, we are going to march tomorrow." He also said, "In our Movement here in Birmingham we have reached the point of no return."; "We have gone too far to turn back now" (R. 236, 237). At the same time, Rev.

Abernathy said he "felt better, now that tomorrow he would be going to jail" (R. 237).

Speeches were made by Rev. M. L. King, Jr., Rev. Shuttlesworth and Rev. Abernathy concerning volunteers to participate in the march to be held the next day (R. 239, 187). King and Abernathy spoke of discrimination against Al Kibbler, blind Negro singer, because he had marched and was **not** arrested. They, Abernathy and King, would "make their move on Good Friday" (R. 182). Rev. Andrew Young spoke to the meeting of the need for all participating in demonstrations, and in fact all Negroes should carry a membership card (R. 190). At the meeting held Friday night Wyatt Tee Walker "called for a meeting of all students the following morning which would be on a Saturday, students from grade 1 through graduate school." He said, "There is something we want to do with the student population of Birmingham. They can get a better education in five days in the jail than five months in these segregated schools" (R. 193). At this same meeting a group was introduced as just being gotten out of jail by Rev. Andrew Young. It was at this meeting Wyatt Tee Walker said he "was looking for two dozen Negroes who are willing to die for me" (Direct, R. 194, Cross, R. 195). The witness testifying from his notes was Mr. J. Walter Johnson, Jr., a reporter for Associated Press, who attended all of the meetings from April 11th through April 14th (R. 177-195). He stated that calls for volunteers to go to jail was made at every meeting by the leaders.[3]

---

[3] "Q. Now, at either of these meetings was anything mentioned about volunteering to go to jail?

A. Yes, that was mentioned at every meeting. They were recruiting people to go to jail—people who were willing to go to jail.

Q. Recruiting people willing to go to jail?

A. Yes, sir" (R. 195).

Please see also the testimony of Rev. J. W. Hayes (R. 331); T. L. Fisher (R. 297). Especial effort was made to gather a large crowd on Easter Sunday. Volunteers were solicited to call all the Negroes in the community and get them out (R. 297).

No effort was made with respect to either the marches of Friday or Sunday to comply in any respect whatsoever with Sec. 1159 of the City Code.[4] In fact, contrary to petitioner's statement (Pet., page 13, last paragraph) that city officials had been informed the march was to be on City Hall,[5] the incident resulting in mob violence on Sunday was conducted with great secrecy as to its purpose, route or destination.[6] Lieutenant Painter requested information on this point from Rev. Wyatt Tee Walker during that afternoon. He explained that the concern of the law enforcement people was in the interest of controlling the crowds and law enforcement. Walker's reply was, "If you control yourself and the police as well as I can control this crowd, there won't be any problem. I guarantee you I can control these people." But a short time later the crowd became a violent unruly mob (R. 207, 208).

Petitioners have emphasized the testimony of Lieutenant Painter[7] on the non-violent theme of the organiza-

---

[4] This ordinance is quoted on pages 3 and 4 of the Petition. A written application must be made setting forth the purpose, number of persons, and streets over which the same will be held. So far as this record discloses, no application was ever filed with the City Commission for these marches, or any others that were held before or after the issuance of the injunction. A telegram was sent to Commissioner Conner on one occasion, April 6, 1963, but petitioners had previously been informed that any such application is directed to the Commission (R. 416).

[5] The Police Department had been told only that the destination of the Friday march was the City Hall (R. 167).

[6] Rev. J. W. Hayes, one of the leaders in the movement, was a participant but repeatedly denied on cross-examination that he knew where the marchers were going (R. 337). Rev. N. H. Smith, Jr., who likewise participated and was one of those wearing a robe, and also was Secretary of A. C. M. H. R., claimed ignorance of its destination (R. 313).

[7] This witness also testified Rev. Wyatt Tee Walker told him if the Movement did not accomplish its purposes they would resort to the method of revolution to accomplish them. The "revolution" referred to was used in the sense of violent or forcible overthrow of the government (R. 204). On cross-examination he said, "The theme of our discussion at that time was revo-

tions here involved and their leaders. However, they did not fully quote other testimony given by him: "The teachings have been non-violent. **The psychology, the methods used, have been to incite others to create violence upon the participants in demonstrations.**" (Emphasis added) (R. 212). He also referred to "a program within the last year or eighteen months of teaching hatred of the white people, that you can't trust the white people, that they are your enemies. . . . They were supposedly teaching non-violence but yet psychologically they were advocating violence" (R. 212).

B. **Some Points of Difference Concerning the Rule Nisi Petition and Its Treatment by the Alabama Courts.** The petition sets forth the course of conduct concerning the press release conference, the defiant meetings held on the evenings of April 11th, 12th and 13th, and the marches and mobs of April 12th and April 14th, in paragraphs 6, 7, 8, 9, 10 and 11. Paragraph 10 alleges the open violation and defiance of such injunction by respondents and others in concert of action with them by such acts and course of conduct (R. 55-61).

In paragraph 12, such acts and things done as a part of such conspiracy are summed up as constituting "an open, flagrant, wilful, malicious violation of said injunction and a flaunting of the due process of the law and open defiance of this Court." In addition, respondents Shuttlesworth, Abernathy, Walker and Martin Luther King, the leaders and who made the statement released to the press on April 11th, and otherwise declared on that day that they would continue to defy the

---

lution. We discussed that a small percentage of the population of Russia overthrew the national government there, and that small groups in other countries overthrew the government of those countries." On the question of cooperation with the Black Muslim group, the purpose of which is the annihilation of the white man (R. 214), Rev. Walker denied the intent to do so (R. 200-202). But on the same night, April 13th, a member of the Black Muslims was introduced at the meeting (R. 187, 188).

injunction, "constitute an open, defiant, repeated and continuing day by day contempt of this Court and contempt of said injunction, and said contempt is continued and repeated each day until said respondent shall publicly recant or retract same by announcement by said respondents so recanting or retracting same with similar or equal press, radio and television coverage as when said statements were made" (R. 61).

The prayer is that fifteen named respondents be required to show cause why they should not be adjudged in contempt of court; but as to respondents Walker, Abernathy, Shuttlesworth and King, Jr., they shall show cause why they should not continue to be adjudged in contempt . . . unless they shall publicly retract and recant statements made at press conferences and mass meetings on April 11, 1963 of their intention to violate the injunction. That is, in effect that these four respondents be held for civil contempt until they performed the acts called for[8] (R. 62).

The trial court, however, tried the case as criminal contempt.[9] Its decree specifically dealt only with past acts of disobedience, which the court said "constitute this proceeding as an action for criminal contempt." (Pet.

---

[8] This prayer bears analogy to a civil contempt citation requiring the respondents to comply with an injunction to call off a strike. Amalgamated Association, etc. v. Wisconsin Emp. Rel. Bd., 258 Wisc. 1, 44 N. W. 2d 549, 551.

[9] The court stated before the trial began that the issue was that it could not inquire in this proceeding into the question of whether the injunction order was erroneously made, but since the proceeding was one for contempt the only question about the jurisdiction "is whether the Court is an equity court and whether or not these parties who are present were served and were notified of this injunction, whether they were within the jurisdictional territory this court embodies; the only question is whether they got notice and then whether or not the injunction was issued by a judge who had the equity authority to issue an injunction and then whether or not they knowingly violated this injunction" (R 132).

Appendix 2 (a)). No distinction was made between the four and the others. Only one sentence was imposed upon each of respondents found guilty. (Pet. Appendix 7 (a)). The penalty was the same for all petitioners.

Further in such decree, the trial court mentioned the fact that acts in defiance and violation of the injunction were done in advance of any motion to dissolve. "The Court is of the opinion that the validity of its injunction order stands upon its prima facie authority to execute the same." (Pet. Appendix 4 (a)). He also relied upon and cited **United States v. United Mine Workers of America,** 330 U. S. 308 (concurring opinion of Mr. Justice Frankfurter).

The Alabama Supreme Court, in reliance upon the same **Mine Workers** case (330 U. S. 258, 290-295), and **Howat v. Kansas,** 258 U. S. 181, and citing the concurring opinion of Mr. Justice Harlan in **In Re Green,** 369 U. S. 689, 693 (Pet. Appendix 24 (a), 25 (a)) decided the case as one in criminal contempt only and upon the proposition that it is the duty of one to obey an injunction, even if it should be based upon enforcement of an invalid ordinance, until he takes appropriate legal steps to accomplish its discharge or dissolution.

The Alabama Supreme Court determined the jurisdictional right of the Circuit Court to issue injunctions under Sec. 144, Constitution of Alabama, and Secs. 1038 and 1039, Code of Alabama 1940 (Pet. Appendix 19 (a), 20 (a)) but did not explore the constitutionality of Sec. 1159. It found there were no procedural defects in the proceeding, except as to three respondents, as to whom the Court felt there was insufficient evidence to show a violation of the injunction with notice of its terms (Pet. Appendix 20 (a), 29 (a)).

C. **The Injunction Suit.** The injunction suit avers a course of conduct by the respondents thereto, including

the petitioners herein, among other things, of congregating in mobs upon the public streets and public places of the City of Birmingham, sponsoring, fomenting, encouraging and inciting breaches of the peace in violation of numerous ordinances and statutes of the City of Birmingham and State of Alabama, trespassing upon places of business after same have been closed for business. That on April 7th respondents organized a parade or procession in the Streets of Birmingham and fostered, encouraged and caused a mob of approximately 700 to 1,000 Negroes to congregate upon the public streets, blocking and interfering with traffic, blocking sidewalks and refusing to move when ordered by a police officer to do so.[10] It is alleged these respondents threatened to continue acts and conduct which are in violation of and disregard for law (R. 6, 7). That such conduct is a part of a massive effort of respondents to **forcibly** integrate all business establishments, churches, and other institutions of the City, that the continued acts of respondents as alleged will cause incidents of violence and bloodshed (R. 9).

The writ of injunction issued, among other things, enjoined respondents and their agents, members, employees, followers, attorneys . . . and all other persons in active concert . . . from engaging in, sponsoring, inciting or encouraging . . . congregating on the public streets or public places into mobs, unlawfully picketing business establishments or public buildings . . . performing acts calculated to cause breaches of the peace . . . unlawful trespassing and "kneel-ins" in churches in violation of the wishes and desires of said churches[11] (R. 12, 13).

---

[10] Sit-Ins, parading without a permit, trespass upon private property are also charged (R. 9).

[11] Mass parades or processions or like demonstrations without a permit are also included (R. 12).

ARGUMENT.

I.

The Decision of the Alabama Supreme Court Rested on State Grounds and Is Not Reviewable.

The Supreme Court of Alabama did not enter into consideration of the alleged invalidity of Sec. 1159 of the City Code of Birmingham. The case was decided on what we believe is an adequate state ground. The injunction order, issued by a circuit judge in equity, who was clothed with constitutional and statutory jurisdiction[12] to issue an injunction in a case arising with respect to matters and parties physically within its jurisdiction.

In **Howat v. Kansas**, 258 U. S. 181, 42 S. Ct. 277, relied upon by the Alabama Supreme Court, the United States Supreme Court in a unanimous opinion written by Mr. Chief Justice Taft in Case No. 491, one of the two cases decided, review of a contempt conviction in the courts of Kansas was sought. The injunction issued to enjoin a

---

[12] Both are quoted in the Alabama Supreme Court Opinion (Pet. Appendix 19 (a), 20 (a)) and are as follows:

"Sec. 144. A circuit court, or a court having the jurisdiction of the circuit court, shall be held in each county in the state at least twice in every year, and judges of the several courts mentioned in this section may hold court for each other when they deem it expedient, and shall do so when directed by law. The judges of the several courts mentioned in this section shall have power to issue writs of injunction, returnable to the courts of chancery, or courts having the jurisdiction of courts of chancery."

"§ 1038. Injunctions may be granted, returnable into any of the circuit courts in this state, by the judges of the supreme court, court of appeals, and circuit courts, and judges of courts of like jurisdiction."

"§ 1039. Registers in circuit court may issue an injunction, when it has been granted by any of the judges of the appellate or circuit courts when authorized to grant injunctions, upon the fiat or direction of the judge granting the same indorsed upon the bill of complaint and signed by such judge."

strike in the mining industry. Petitioners alleged the Industrial Court Act of Kansas "was void because in violation of the federal constitution and the rights of defendants thereunder, and so the court was without power to issue an injunction as prayed." 258 U. S. at pages 187-188. The position of the Kansas Supreme Court was that the defendants were precluded from such attack in a collateral contempt proceeding.

The U. S. Supreme Court agreed (258 U. S. at pages 189-190):

> "An injunction duly issuing out of a court of general jurisdiction with equity powers, upon pleadings properly invoking its action, and served upon persons made parties therein, and within the jurisdiction, must be obeyed by them, however erroneous the action of the Court may be, even if the error be in the assumption of the validity of a seeming but void law going to the merits of the case. It is for the court of first instance to determine the question of the validity of the law, and until its decision is reversed by orderly review, either by itself or by a higher court, its orders based on its decision are to be respected, and disobedience of its lawful authority to be punished. Gompers v. Bucks Stove & Range Co., 221 U. S. 418, 450, 31 Sup. Ct. 416, 55 L. Ed. 797, 34 L. R. A. (U. S.) 874; Toy Toy v. Hopkins, 212 U. S. 542, 541, 29 Sup. Ct. 416, 53 L. Ed. 644. See also United States v. Shipp, 203 U. S. 563, 27 Sup. Ct. 165, 51 L. Ed. 319, 8 Ann. Cas. 265 . . ..
>
> "As the matter was disposed of in the State Courts on principles of general, and not federal law, we have no choice but to dismiss the writ of error as in No. 154."

Mr. Chief Justice Vinson, in **United States v. United Mine Workers**, 330 U. S. 258, quotes with favor the first

paragraph above quoted from **Howat v. Kansas**, concerning the duty to obey an injunction though it may be based upon an unconstitutional or void law, and concludes:

> "Violations of an order are punishable as criminal contempt even though the order is set aside on appeal, Warden v. Searls, 121 U. S. 14 (1887), or though the basic action has become moot, Gompers v. Bucks Stove & Range Co., 221 U. S. 418 (1911)." (330 U. S. 258, 293, 294.)

The Alabama Supreme Court also relied upon the **United Mine Workers** case and quoted at length from it (Pet. Appendix 21 (a)-25 (a)). It also cited the concurring opinion of Mr. Justice Harlan in **In Re Green**, 369 U. S. 689, 693 (Pet. Appendix 25 (a)).

Under proposition II, pages 32-38, petitioners urge the point that in **In Re Green**, 369 U. S. 689, *supra*, the Court explicitly distinguished **Mine Workers** and reversed a contempt conviction where the injunction was void because Congress had pre-empted the field. We do not feel the majority opinion in **In Re Green** in any way overturns or weakens the doctrine of **Howat v. Kansas**, 258 U. S. 181, and in substance followed in **Mine Workers**, as applied to the instant case.

In **Green**, a member of the bar was sentenced to jail and fined for contempt. When advised by the clerk an injunction had been requested, he expressed his desire for a hearing for which he was ready at any time. The injunction was nevertheless issued ex parte. He then immediately asked for a hearing; but none was granted. At the time the ex parte injunction was granted, the union had on file with the National Labor Relations Board a charge of an unfair labor practice concerning the same controversy, but no hearing had been held on it.

Petitioner believed under Ohio law the injunction was invalid because issued without a hearing and also because the controversy was one for the National Labor Relations

Board and not for the state court. He therefore advised the union officials the injunction was invalid and the best way to contest it was to continue the picketing and to appeal or test any order of commitment for contempt by habeas corpus. Green was held in contempt for giving this advice and although he was not allowed to testify in his defense at the contempt hearing he offered to testify that, "I was convinced that both the judge and Mr. Ragan [opposing counsel] were aware that I had consented to bring these men before the court and stipulate the essential matters for the express purpose of testing the validity of the court's order and its jurisdiction over the subject matter."

The majority opinion of this Honorable Court commented upon the conviction without a hearing and the evils thereof, but also did refer to **Mine Workers**, and distinguished it on the authority of **Amalgamated Association of St. Elec. Ry. & Motor Coach, etc. v. Wisconsin Employment Relations Board**, 340 U. S. 383, 71 S. Ct. 359, 95 L. Ed. 364, as holding that a state court is without power to hold one in contempt for violating an injunction that the state court had no power to issue by reason of federal statutory pre-emption.

We respectfully contend that cases such as **In Re Green**[13] and **Amalgamated Association, etc. v. Wis. Emp.**

---

[13] Footnote 1 on page 693 of 369 U. S. mentions the fact that Mr. Chief Justice Vinson wrote the opinion in **Mine Workers** and also **Amalgamated Association, etc.** This is to emphasize the point that the doctrine of the first case does not conflict with the second. However, there is another distinction between the two cases other than that the former dealt with a federal court order, and the latter, a state order, in a controversy as to which Congress had pre-empted the field, where if the federal policy is to prevail, federal power must be complete. In **Mine Workers** criminal contempt was involved in the pertinent question, 330 U. S. at 293, 294. In **Amalgamated Association** the order was to recall the strikers to their jobs. The Wisconsin Supreme Court expressly held the contempt conviction was for the benefit of the Wisconsin Board and was referred to as "wilful and contumacious civil contempt," 258 Wis. 1, 44 N. W. 2d 547, at page 550.

Rel. Bd., *supra*, dealing with the doctrine of federal pre-emption and where no intent to flout the authority of the court was involved, do not in any way resemble and have no application to cases circumstanced as the instant one, where no federal pre-emption statute is involved and where the injunction order issued to protect lives and property, a matter of state concern and state court jurisdiction,[14] was openly defied and violated, and its authority flouted, without seeking its dissolution or discharge, and in circumstances of mob violence, resulting in personal injury and property damage.

Petitioners, on page 34 of the petition, suggest the **Mine Workers** decision should be distinguished, limited, or overruled. **Howat v. Kansas**, although relied upon by the Alabama Supreme Court, has apparently either been overlooked or ignored. Be that as it may, it is obviously directly in point to require the denial of their petition for writ of certiorari.

The principal significance of **Mine Workers** is the stamp of approval it places on **Howat v. Kansas**. We have hereinabove discussed our position that neither the **Wisconsin** case, nor **In Re Green**, *supra*, decided since **Mine Workers**, conflict with the state ground doctrine of **Howat v. Kansas**, limiting certiorari review of convictions for criminal contempt in the absence of any orderly attempt to dissolve or discharge a temporary injunction before committing wilful and defiant contempt, to the bare ques-

---

[14] Matters related to the preservation of law and order in a local community are under our federal system matters for local authorities and of local court jurisdiction. **City of Greenwood v. Peacock**, ... U. S. ..., June 20, 1966, dealing with remandment of a removal of state court criminal prosecutions in which the Court said: "First, no federal law confers an absolute right on private citizens, on civil rights advocates, on Negroes, or on anybody else, to obstruct a public street, to contribute to the delinquency of a minor, to drive an automobile without a license, or to bite a policeman. Second, no federal law confers immunity from state prosecution on such charges."

tion of the general authority of the court to issue an injunction without considering the constitutional validity of an ordinance upon which the injunction is based.

Under our Proposition III, pages 25-31, post, we shall also consider the inapplicability of some of the other cases referred to by petitioners under their Proposition II (Pet. 32-38).

II.

Petitioners' Contentions Defending Against Such Contempt Convictions by Constitutional Attack Upon the Injunction Are Untenable.

A. **Vagueness of Injunction Terms.** Petitioners argue they were not sufficiently informed of the scope of the injunction. However, the press release of April 11th in which most of the petitioners participated declared open war on the injunction and all laws which they considered unjust. The point was not that they did not understand its prohibitions, but that they would not abide them. Nor was any effort made prior to the commission of the acts and conduct for which they were convicted, to have the trial court dissolve, discharge, or in any way construe it or limit its application.

They knew or could have easily ascertained by consultation with their lawyers that they and those in concert with them were enjoined from engaging in, sponsoring, inciting or encouraging: mass street parades or mass processions or like demonstrations without a permit; congregating on the streets or public places into mobs performing acts calculated to cause breaches of the peace; violating ordinances and state laws, including those relating to traffic, or from conducting "kneel-ins" in churches in violation of the wishes and desires of said churches.

Even if a part of the injunction writ were so vague as to be a nullity, this would not justify a violation of the

valid part. **Liquor Control Commission v. McGillis**, 91 Utah 586, 65 P. 2d 1136, 1140; **In Re Landau**, 230 App. Div. 308, 245 N. Y. S. 734, 735; **Ex Parte Connor**, 240 Ala. 327, 198 So. 850.

B. **Sec. 1159 of City Code of Birmingham.** We have contended in I above the question of the invalidity vel non of Section 1159 of the City Code of Birmingham was not reached in the decision of the Alabama Supreme Court and is not before this Honorable Court at this time. However, if we should be deemed in error in this contention we respectfully urge that, notwithstanding the two to one decision of the Alabama Court of Appeals in **Shuttlesworth v. City of Birmingham**, 180 So. 2d 114 (1965), it is valid on its face and as applied to petitioners.

The ordinance is over thirty-five years old, first appearing in the Birmingham City Code of 1930. It was born in an era when long lines of masked and robed Ku Klux Klansmen frequently passed through the streets and highways of the city in parade formation; when, in the name of preserving law and order, crosses were burned and citizens, both white and colored, were taken from their homes and summarily punished by flogging for some real or fancied misdemeanor.

Its provisions requiring an application to be filed with the City Commission containing such relevant information as size, route and purpose is essential to protecting the welfare, safety and convenience of the public. The permit should necessarily be conditioned upon the public convenience and order in the use of its streets and highways. We recognize that it must be uniformly applied to all groups alike who would resort to the use of the streets in furtherance of a program relating to freedom of expression within the constitutional guarantees. But such right must necessarily yield to the duty and responsibility of the municipality to "regulate the use of city

streets and other facilities to assure the safety and convenience of the people in their use." **Cox v. Louisiana,** 379 U. S. 536, 554, 85 S. Ct. 453, 464.

For example, assembling of a violent, unruly mob such as that of Sunday, April 14, 1963, commandeering the entire street from curb to curb and overflowing both sidewalks in a march, the route and destination of which were shrouded in secrecy, sponsored, fomented, incited and encouraged by petitioners, the leaders of whom had openly declared war upon city and state laws and the orders of state court judges in the south, can no more be entitled to such constitutional protection than would Ku Klux Klansmen be so entitled to commandeer the public streets to perpetrate a flogging or other unlawful activity in the name of freedom of speech or freedom of assembly.

As stated by Mr. Chief Justice Hughes, in **Cox v. State of New Hampshire,** 312 U. S. 569, 574, 61 Sup. Ct. 762, 765:

> "Civil liberties, as guaranteed by the Constitution, imply the existence of an organized society maintaining public order without which liberty itself would be lost in the excesses of unrestrained abuses. The authority of a municipality to impose regulations in order to assure safety and convenience of the people in the use of public highways has never been regarded as inconsistent with civil liberties but rather as one of the means of safeguarding the good order upon which ultimately they depend."

This case upheld the conviction of five Jehovah's Witnesses, where the parade consisted of about twenty marchers which proceeded in close formation upon the public streets of Manchester, a city of about 75,000 population, without having procured a parade permit from the statutory Licensing Board appointed by the City gov-

ernment to investigate and decide the question of granting licenses for parades, processions, or open air meetings. **Cox v. New Hampshire**, *supra*, 312 U. S. 569-574, 61 S. Ct. 762-768.

The statute and licensing procedure was sustained in **Poulos v. New Hampshire**, 345 U. S. 395, 405-408, 73 S. Ct. 760, 766-768. Both of the above New Hampshire cases were cited by Mr. Justice Goldberg in the majority opinion in **Cox v. Louisiana**, *supra*, 379 U. S., at page 558, 85 Sup. Ct., at page 466, in support of the statement that a licensing system in which limited discretion may be vested in administrative officials under properly drawn ordinances in the issuance of permits for the use of the streets, if such discretion is exercised with uniformity and without discrimination.

The New Hampshire statutes construed in **Cox** and **Poulos**, completely without any stated standards, were construed by the Supreme Court of New Hampshire in such a way as to meet the test above stated. Section 1159 has not as yet been construed by the Alabama Supreme Court, but is now before it on certiorari to the Court of Appeals in the **Shuttlesworth** case, 180 So. 2d 114, *supra*.

C. **Evidence Excluded.** Rulings on evidence are not reviewable on certiorari review of a contempt conviction. **Ex Parte Seymour**, 264 Ala. 689, 89 So. 2d 83. The Supreme Court of Alabama considered this case without entering into a consideration of Section 1159. The only purpose evidence ruled inadmissible by the trial court could serve would concern the application of the ordinance 1159. But such issue was not involved for two reasons. First, the decision on state grounds, not involving the validity of the ordinance as applied. Second, it is uncontradicted that, at least as to the April 14th incident, no effort of any kind was made to comply in any manner with the ordinance. The whole matter was con-

ducted by petitioners on the basis of a "guessing game" in which the leading strategist, Walker, refused to give information to the law enforcement forces as to the destination, much less the route intended to be utilized. The rulings of the trial court do not constitute a ground for granting certiorari by this Honorable Court.

D. **Evidence Was Sufficient to Sustain Conviction.** Petitioners argue lack of evidence to support the contempt convictions of petitioners under the rule of **Thompson v. Louisville**, 368 U. S. 157; that Judge Cates of the Alabama Court of Appeals found that the proof presented in the case of City v. Shuttlesworth failed to show the April 12th march was "a procession which would require, under the terms of Sec. 1159, the getting of a permit." What the evidence in that case may have shown is completely foreign to the record in this case. This record is adequate to show there was a "parade or procession or other public demonstration on the streets or other public ways of the City" within the terms of Sec. 1159, both on Friday, April 12th, and on Sunday, April 14th, 1963. This testimony included, among others, that of Mr. James Ware, News Reporter, Lieutenant Willie Painter, Inspector W. J. Haley, and Mr. J. Walter Johnson, Jr., Reporter for the Associated Press, and Mr. Elvin Stanton, News Director of WSGN Radio. In each instance the processions emanated from the church and were joined by those congregated on the outside as they proceeded down the public streets.[15]

The Supreme Court of Alabama dealt with the testimony of Mr. Stanton, Lieutenant Painter, and the pictures taken by Mr. Ware, using the following language:

> "Petitioners did not obtain a permit to march or parade. A march or parade occurred on Friday,

---

[15] Parts of this evidence are set out herein on pages 5-8; also, Pet. Appendix 15 (a)-17 (a).

April 12, and another march occurred on the streets of Birmingham on Sunday, April 14, 1963.

Willie B. Painter, investigator with Alabama Department of Public Safety, testified that he observed the Friday march, that several of petitioners entered a church, that within several minutes a group came out of the church and began a parade or march in the direction of downtown Birmingham, that:

> 'A. This group was led by Rev. Martin Luther King, Jr., Rev. Ralph Abernathy, Rev. Shuttlesworth, as I recall, Rev. Bernard Lee was also in the formation leading the group. There were several people following in this formation. As the group marched away from the church in the direction of downtown Birmingham a group of persons who had assembled along the sidewalk and the street followed this procession. This group of people would consist of several hundred.
>
> Q. Now, do you mean the marchers or the other group?
>
> A. The group following the marchers. Actually the whole procession was going almost as a group. As the group came out of the church then the whole group of people who had assembled along the sidewalk followed along behind them and I think you could describe it as one procession.'

The witness, Painter, further testified that he was present at a church from 2:30 or 3:00 o'clock in the afternoon of Sunday, April 14, 1963; that he observed the petitioner, Walker, talking to a group 'and forming a group of people two or three abreast;' that a group came out of the church and began walking rapidly along the sidewalk; that 'this large crowd of people that had gathered outside the church began moving along with them;' that there were several hundred people within this group; that an object

struck the windshield of one of the city motors and broke the windshield; that the witness saw a negro man throw a brick which 'passed within a close range of one of the police officers there in the street on duty.'

James Ware, newspaper photographer, testified that a rock, 'about the size of a large grapefruit' hit him on the back of the head and caused a knot which was still sore; that a lot of people were 'hollering, apparently at the policemen making the arrests;' that the witness saw only two rocks but heard several more falling around him; that he was concentrating on taking pictures of what was happening; that he identified A. D. King and Wyatt Tee Walker in the picture.

The witness Ware identified four pictures, which were introduced into evidence and are before us. Ware identified the pictures as being pictures which he took of the paraders on Sunday afternoon. **The pictures show people walking in and entirely occupying a street from curb to curb on each side and on the sidewalks**". (Pet. Appendix 15 (a)-19 (a)).

We do not imply that the contempt convictions were not supported by other evidence related to these and other contumacious acts of petitioners, acting in concert, to defy and violate the injunction writ. But since this is the particular phase of the injunction as to which this contention is urged by petitioners, we do not at this time deal further with them. Certainly, the evidence referred to more than adequately answers petitioners' argument.[16]

---

[16] Please see **Cox v. New Hampshire**, 312 U. S. 569, 573, 574, *supra*, for a definition of a parade which in that case consisted of about twenty people proceeding in order and close file as a collective body on the city streets.

And, as pointed out on page 5, ante, such evidence is substantially without dispute.[17]

III.

The Contempt Convictions Cannot Be Overturned on Certiorari on the Contention the Injunction Was Void for Deprivation of Free Speech.

In Section I, we have asserted the principle deemed applicable that the instant case was decided on adequate state grounds which did not reach the constitutional issues sought to be presented by petitioners. We have cited **Howat v. Kansas**, 258 U. S. 181, 42 S. Ct. 277, which holds that a state contempt conviction on criminal contempt upheld by the State Supreme Court on the basis of the duty of one enjoined to obey the injunction unless he takes appropriate action to dissolve or discharge it, even though the injunction is based on a constitutionally invalid statute, is an adequate state ground to support the state court decision. We also cited **United States v. United Mine Workers**, 330 U. S. 258, which in turn approvingly quotes from **Howat v. Kansas. Mine Workers**, it is true, did not involve a state court injunction, but it did uphold a federal court conviction for criminal contempt for violating an injunction which by virtue of a federal statute the court was without jurisdiction to issue.[18]

In their section II, beginning at page 32, petitioners mention and attempt to distinguish **Mine Workers**, but

---

[17] In his speech on the evening of April 11th petitioner King, Jr., said he would "march" on the next day. Of the respondents to the contempt show cause order who testified, none offered any substantial dispute of the City's testimony, except some referred to the April 14th affair as a "walk" (T. L. Fisher, R. 295; N. H. Smith, R. 305—he wore his clerical robe in the "walk", as did two others (R. 308); J. W. Hayes referred to it as a "demonstration" (R. 335)).

[18] Please see concurring opinion of Mr. Justice Harlan, **In Re Green**, 369 U. S. at page 695, 82 Sup. Ct. at page 1118.

so far as the table of cases shows, and so far as we have been able to find, **Howat v. Kansas**, *supra*, is not mentioned in this section or elsewhere in the petition, except in the appendix, in the Alabama Supreme Court Opinion there reproduced. They do cite some decisions of this Court which they seem to think contrary to **Mine Workers**. We have heretofore discussed **United Gas, Coke and Chemical Workers v. Wisconsin Employment Relations Bd.**, 340 U. S. 383; and **In Re Green**, 369 U. S. 689, ante pages 13-16. These cases were decided subsequent to **Mine Workers** and concern federal statutory pre-emption in the field of labor relations under the Commerce Clause.

Some other decisions of this Court are also cited. One of these is **Thomas v. Collins**, 323 U. S. 516, involving a free speech question, is not remotely similar, either to our case or **Mine Workers**. In that case, a restraining order was served a few hours before Collins was to address a labor rally which he had made a trip from Detroit to address on that evening, with the intent to leave Texas within the next two days. The injunction was issued at Austin, 170 miles away. It is obvious in a situation involving free speech Collins was deprived of his constitutional right because there was no way for him to contest the restraining order prior to making the address as advertised. In a real sense, the litigable rights of Collins were foreclosed by an ex parte order.

At the time he appeared in Austin to answer the contempt citation three days after the restraining order was issued, he filed a motion to dismiss the complaint, dissolve the temporary restraining order, and quash the contempt proceeding. The motions were denied and after hearing a temporary injunction issued.

Also, the Supreme Court of Texas regarded habeas corpus to review the contempt conviction as a proper method to challenge the validity of the state statute on

federal constitutional grounds. This Court then, on the authority of **People of New York ex rel. Bryant v. Zimmerman**, 278 U. S. 63, 49 Sup. Ct. 61, 73 L. Ed. 184, 62 A. L. R. 785, had the question properly before it[19] and proceeded to consider the Texas statute and to hold invalid as applied as in violation of his right of free speech to appear and address the meeting, and as a part of such speech to solicit those present to form the union.

The decisions of this Court make a well recognized distinction in the application of the constitutional amendment protecting free speech between free speech and the concept of free speech as it is manifested in demonstrations, parades, picketing, and other use of public streets or highways.[20]

The gathering of the unruly, violent mob on April 14th and the gathering of the unruly mob on April 12th, commandeering the streets of the city, is quite a different thing from the use of ordinary means of communication such as the printed or spoken word.

Moreover, as to the Sunday mob that became unruly and violent, its purpose, or what message the demonstration itself was designed to convey, is shrouded in secrecy. From the constant recruitment of people ready to go to jail and those ready to die, at the meetings of April 11th, 12th and 13th, and especially April 13th, it may be legitimately inferred that it was planned with the intent that

---

[19] 323 U. S. at 524, 65 Sup. Ct. at page 320, margin note 7.

[20] In **Hughes v. Superior Court**, 339 U. S. 460, 465, 70 S. Ct. 718, Mr. Justice Frankfurter departs from the original concept in **Thornhill v. Alabama**, 310 U. S. 89, equating picketing with freedom of speech, and recognizes that it is more than speech because it may produce different consequences from other modes of communications. A similar distinction is expressly recognized by Mr. Justice Goldberg as it relates to demonstrations on public streeets. **Cox v. Louisiana**, 379 U. S. 559, 568, 566, 85 Sup. Ct. 476, 481. Also please see **Cox v. Louisiana**, Case 24, 379 U. S. 536, 554, 558, 85 S. Ct. 453, 464, 466.

violence would be precipitated and either those participating, police officers, or others would be injured and perhaps killed.

In this background, we are unable to see the applicability or even the relevancy of such cases as **Fields v. City of Fairfield**, 375 U. S. 248; **N. A. A. C. P. v. Button**, 371 U. S. 418; **Bantam Books, Inc. v. Sullivan**, 372 U. S. 58, 83 S. Ct. 631; **Near v. Minnesota**, 283 U. S. 697, 51 S. Ct. 625; and **Freedman v. Maryland**, 380 U. S. 51, 85 S. Ct. 734, which, like **Thomas v. Collins**, 323 U. S. 516, 65 S. Ct. 315, *supra*, involve mere oral or written communication, or **Johnson v. Virginia**, 373 U. S. 61; **Hamilton v. Alabama**, 376 U. S. 650, relating to direct contempt, in which the conduct in question was deemed not punishable, at least in the absence of a public hearing as in **In Re Oliver**, 333 U. S. 257, or a case involving waiver by a grand jury witness of immunity from prosecution, such as **Stevens v. Marks**, 383 U. S. 234.

Equally distinguishable are those cases where a contempt conviction was for violation of an injunction or court order where the issuing court was completely without power to issue the injunction or order: **In Re Sawyer**, 124 U. S. 200 (U. S. Circuit Court, in equity, held without power to restrain the appointment or removal of a municipal public official); **Ex parte Fisk**, 113 U. S. 713 (U. S. Circuit Court held without power to enforce a state pre-trial examination statute after removal from state court); **Ex parte Rowland**, 104 U. S. 604 (U. S. Circuit Court held without power to enforce by contempt its order requiring the Court of County Commissioners of Chambers County, Alabama, to collect a tax levied by such Court because the duty to collect the tax was vested by state statute in the tax collector); and **Donovan v. Dallas**, 377 U. S. 408, 414 (striking down a contempt conviction by a state court to enforce an injunction of such court restraining the contemnors from filing and prosecuting an in per-

sonam suit in the U. S. District Court because such state court was without power to issue the injunction due to conflict with federal jurisdiction).

The difference between this line of cases and the instant case is succinctly stated by Mr. Justice Gray in **In Re Sawyer**, 124 U. S. 200, 8 Sup. Ct. 482, at page 493, in the closing paragraph of the opinion as follows:

> "The circuit court being without jurisdiction to entertain the bill in equity for an injunction, all its proceedings in the exercise of the jurisdiction which it assumed are null and void. The restraining order, in the nature of an injunction it had no power to make. The adjudication that the defendants were guilty of a contempt in disregarding that order is equally void, their detention by the marshal under that adjudication is without authority of law, and they are entitled to be discharged. Ex parte Rowland, 104 U. S. 604; Ex parte Fisk, 113 U. S. 713, 5 Sup. Ct. Rep. 724; In re Ayers, 123 U. S. 443, 507, 8 Sup. Ct. Rep. 164. Writ of habeas corpus to issue."

This Court was aware of the difference when it decided **Mine Workers**, 330 U. S. 258, 291, 292, 67 Sup. Ct. 677, 694, 695, and cited, discussed and quoted with favor from **United States v. Shipp**, 203 U. S. 563, 27 Sup. Ct. 165, 51 L. Ed. 319, 8 Ann. Cas. 265. In the latter case a criminal contempt conviction was upheld where a prisoner was lynched pending a stay of execution order issued by the United States Supreme Court pending appeal from the Tennessee Supreme Court. Shipp, the sheriff having custody of the prisoner, was charged with conspiring with others for the purpose of lynching the prisoner, with intent to show contempt for the order of this Court. He raised the question of the frivolous nature of the federal constitutional questions raised by the prisoner and thus denied the jurisdiction of the Court to issue the stay order.

The Court, through Mr. Justice Holmes, rejected the contention as to want of jurisdiction, and in ordering the contempt to be tried, stated:

> "We regard this argument as unsound. It has been held, it is true, that orders made by a court having no jurisdiction to make them may be disregarded without liability to process for contempt. In re Sawyer, 124 U. S. 200, 8 S. Ct. 482, 31 L. Ed. 402; Ex parte Fisk, 113 U. S. 713, 5 S. Ct. 724, 28 L. Ed. 1117; Ex parte Rowland, 104 U. S. 604, 26 L. Ed. 861. But even if the Circuit Court had no jurisdiction to entertain Johnson's petition, and if this court had no jurisdiction of the appeal, this court, and this court alone, could decide that such was the law. It and it alone necessarily had jurisdiction to decide whether the case was properly before it. On that question, at least, it was its duty to permit argument, and to take the time required for such consideration as it might need. See Mansfield, Coldwater & Lake Michigan Ry. Co. v. Swan, 111 U. S. 379, 387, 4 S. Ct. 510 [514], 28 L. Ed. 462, 465. Until its judgment declining jurisdiction should be announced, it had authority, from the necessity of the case, to make orders to preserve the existing conditions and the subject of the petition, just as the state court was bound to refrain from further proceedings until the same time. Rev. Stat., § 766, act of March 3, 1893, c. 226, 27 Stat. 751 [28 U. S. C. A., § 465]. The Fact that the petitioner was entitled to argue his case show what needs no proof, that the law contemplates the possibility of a decision either way, and therefore must provide for it."

We respectfully urge the petition should be denied on the sound principles stated in **Howat v. Kansas**, 258 U. S. 181, *supra*, and **Mine Workers**, 330 U. S. 258, *supra*, where

as here the injunction was duly issued by a court with jurisdiction and power to issue the injunction, and where without taking advantage of any appropriate legal remedy petitioners defied and set about to wilfully violate it in a manner resulting in violence and personal injury.

IV.

Statements and News Release Made by Petitioners Walker, King, Abernathy and Shuttlesworth Cannot Be Isolated From Their Direct Part in the Violation of the Injunction to Stand as Protected Free Speech.

Under their Proposition III (Pet. 38-41), petitioners attempt to isolate evidence of derogatory statements, criticizing the courts of the South and the injunction in this case in particular, from the direct pronouncement of defiance and intent to violate the injunction contained therein. The point is made that the petition for show cause order charged these written and oral declarations as a separate offense as to the four petitioners above named, and since the conviction was single their convictions should be reversed; if standing alone, such charges could not be sustained because they conflict with constitutionally protected free speech.

Our answer is two fold. First, the statements and declarations are simply acts, but when taken into account with other acts constitute evidence of the guilt of not only these four petitioners, but the others as well, of a conspiracy to defy and violate the injunction, which is criminal contempt. The thrust of the charge against all respondents made a party to the show cause petition is that they conspired to defy and violate the injunctive order in the consummation of which conspiracy certain meetings were held, statements, verbal and written, were made, and other overt acts committed as recited in the petition. The charges were so considered by the trial

court. Only one sentence of conviction was imposed. Each respondent found guilty was treated alike; the four who played major roles in the conspiracy were given the same punishment as those who were found guilty of having played minor parts. To say that the trial court must be presumed to have meted out added punishment to the four because of the statements and declarations of which they alone were guilty is to ignore the plain facts disclosed by the trial court's decree. As mentioned hereinabove,[21] the prayer of the petition to show cause was that the four be required to perform in the future an affirmative act of recanting and retracting these declarations, civil contempt, but the trial court refused to do this and restricted the convictions to past conduct only, criminal contempt.

This treatment of the contempt petition by the trial court, considering all respondents equally guilty of the overall conspiracy consisting of a series of acts to flout and violate the injunction in carrying on the "Movement",[22] which respondent King said had reached the point of no return (R. 236, 237), is sustained by a number of decisions of this Court and other courts. Included among these are: **Blumenthal v. United States**, 332 U. S., pages 539, 559, 68 Sup. Ct. 248, 257; **United States v. Rosenberg** (C. C. A.-2, 1952), 195 Fed. 2d 583, 600, 601, **cert. denied** 344 U. S. 838, 73 S. Ct. 20, 21, 97 L. Ed. 652, **reh.**

---

[21] Please see ante pages 8-11 under the heading "Statement" for an elaboration of this point.

[22] What the "Movement" was has never been defined, but the Alabama organization enjoined was the Alabama Christian Movement for Human Rights. That it was an organized, planned, sustained program in which publicity of all kinds for money raising and other purposes was an integral part is clear. Without doubt, the defiant news release and other like declarations were intended, along with other overt acts exploiting defiance and violation in furtherance of these purposes in the area of nation-wide publicity of the "Movement," for such money raising and possibly other purposes.

denied 344 U. S. 889, 73 S. Ct. 134, 180, 97 L. Ed. 687, **reh. denied** 347 U. S. 1021, 74 S. Ct. 860, 98 L. Ed. 1142, **motion denied** 355 U. S. 860, 78 S. Ct. 91, L. Ed. 2d 67; People v. McCrea, 6 N. W. 2d 489, 303 Mich. 213, **cert. denied** 318 U. S. 783, 63 S. Ct. 851, 87 L. Ed. 1150.

Each of the conspirators is guilty in equal degree for "all that may be or has been done," whether he entered the conspiracy at the beginning or later. **Poliafico v. United States**, 237 Fed. 2d 97, 104 (C. C. A.-6-1956); **cert. den.**, 352 U. S. 1025, 77 S. Ct. 590, 1 L. Ed. 2d 597.

Second, the declarations, written or verbal, even if standing alone, are more than mere speech. They do more than merely criticize the court for issuance of the injunction. Even aside from any further involvement of these men in the chain of events that followed, and even if the conspiracy charge had not been made against them, it is clear that their joint declarations encouraging and inciting the violation of the injunction by the other members of S. C. L. C. and A. C. M. H. R. were more than free speech. They partake more of the nature of "verbal acts."[23]

We have read the decisions of this Court cited by petitioners. None of them involved a direct threat to defy and violate, encouraging and inciting the violation of an injunction or restraining order by the leaders of an enjoined organization, resulting in its violation. Consequently, they are distinguishable from the instant case.

In Re Sawyer, 360 U. S. 622, 629, 79 S. Ct. 1376, 1379; presented the question, "Did post trial speech of lawyer impugn the integrity of the U. S. District Court Judge or reflect upon his impartiality?" This Court in considering the notes of the news reporter made on the speech held it did not. A majority of the court, composed

---

[23] **Gompers v. Buck's Stove and Range Co.**, 221 U. S. 418, 31 S. Ct. 492, 497, uses this expression in speaking of words used, "unfair" or "we don't patronize," in relation to a boycott.

of Mr. Justice Frankfurter, Mr. Justice Clark, Mr. Justice Harlan and Mr. Justice Whittaker, dissenting, together with Mr. Justice Stewart, concurring, held that criticism of a trial judge by a lawyer while engaged in a pending case, if made with the intent to obstruct justice, is not protected free speech. It is logical that such conduct by a party to pending litigation would likewise be unprotected.

In **Wood v. Georgia,** 375 U. S. 375, 386, 82 S. Ct. 1364, 1372, the contempt citation was for criticizing a grand jury charge to investigate possible evils resulting from a bloc vote. The sheriff, who expected to soon be up for election, was the defendant. Mr. Chief Justice Warren noted the fact that no individual was on trial and no jury involved. He made this pertinent distinction:

> "And, of course, the limitations of free speech assume a different proportion when expression is directed toward a trial as compared to a grand jury investigation." 375 U. S., at pages 389, 390.

Bridges v. California, 314 U. S. 252, concerns contempt convictions for newspaper editorials and a telegram sent by Bridges to the Secretary of Labor. Mr. Justice Black, writing for the majority of five justices, made it clear that Bridges' telegram, which stated a strike would result if the California court decree should be enforced, was not a threat to violate the court order:

> "It is not claimed that such a strike would have been in violation of the terms of the decree, nor that in any other way it would run afoul of the law of California. On no construction, therefore, can the telegram be taken as a threat either by Bridges or the union to follow an illegal course of action.
>
> "More over, this statement was made to the Secretary of Labor, who is charged with duties in connection with prevention of strikes." 314 U. S., at page 277.

Please contrast the defiant declarations of intention to violate the court order in the instant case, made and repeated at meetings clearly designed to encourage and incite the organizations, S. C. L. C. and A. C. M. H. R., and their members, to violate the court order.

Pennekamp v. Florida, 328 U. S. 331, 66 S. Ct. 1029, had to do with editorials in a Miami newspaper. This involved no threat by a party to violate a court order, or as it was expressed, to interrupt the orderly processes of the court. Such interruption is stated to be a proper test in balancing freedom of expression against improper interference with the orderly administration of justice. 328 U. S., at page 336. Please note the extreme contrast in this respect between **Pennekamp** and the instant case.

Craig v. Harney, 331 U. S. 367, 67 S. Ct. 1249, concerned criticism of the action of a state trial judge in newspaper stories and an editorial. No threat nor overt act to disobey a court order resulted. The case is entirely dissimilar.

Two other cases cited by petitioners, **Garrison v. Louisiana**, 379 U. S. 64, 85 S. Ct. 209, and **New York Times v. Sullivan**, 376 U. S. 254, 84 S. Ct. 710, are not pertinent. They deal with libel, criminal and civil.

"When a case is finished, courts are subject to the same criticism as other people; but the propriety and necessity of interference with the course of justice by premature statement, argument or **intimidation** hardly can be denied (emphasis ours)." **Patterson v. Colorado**, 205 U. S. 454, 27 S. Ct. 556, 558.

The declarations in defiance and threats of violation, accompanied by open encouragement and incitement to violation of the injunction, of which the four petitioners were guilty, cannot be justified as protected free speech by any decision mentioned by petitioners, or, for that matter, by any other decision or authority that we have been able to find.

V.

The Conviction of Petitioners Hayes and Fisher Is Sustained by the Evidence.

These petitioners urge that their convictions should be overturned because of lack of evidence that they had knowledge or notice of the injunction terms. Both were active members of A. C. M. H. R., Hayes for six years (R. 330) and Fisher for four years (R. 296).

Both of them were attendants at the meetings held prior to the Sunday, April 14th, parade or procession, in which they both took part. Both attended the meeting of Saturday, April 13th. At this meeting volunteers were recruited for the parade or procession to be held the next afternoon, volunteers to go to jail. Also, volunteers were solicited to call all the Negroes in the community to get them out the next day for this "demonstration".[24]

Petitioner Hayes admitted to Detective Jones that he was with the leaders in the Sunday, April 14th, march, and that he knew of the injunction and was just marching in the face of it anyway (R. 251).

Respondent Fisher admitted he attended both the meeting held on Saturday night and "that held on Friday night as well" (R. 296).

It was the Friday meeting when petitioner Walker made his call for Negroes willing "to die for me". He also made a call for students, ages 1 through graduate school. At this and all meetings volunteers to go to jail were called for. Fisher stated volunteers "to walk" were

---

[24] In Hayes' testimony it was referred to as a "demonstration." This witness said he had heard earlier that demonstrators had been enjoined. He said he had made up his mind that he would take part in it and he went for that purpose (R. 334, 335).

called for at the Saturday, April 13th, meeting. They were to walk the next day, April 14th (R. 297).

He admitted he knew about the injunction (R. 299). That it was interpreted to him that if he participated in the April 14th demonstration he would have to go to jail (R. 300).

As the Supreme Court of Alabama stated in affirming the judgment against them:

> "We think it would require of the trial court an unduly naive credulity to declare that the court erred in concluding that Hayes and Fisher had knowledge that marching on the streets was enjoined and that they knowingly and deliberately violated the injunction by marching or parading on Sunday" (Pet. Appendix 28 (a)).

CONCLUSION.

It is respectfully submitted that the petition for writ of certiorari should be dismissed.

Respectfully submitted,

J. M. BRECKENRIDGE,
EARL McBEE,
WILLIAM C. WALKER,
600 City Hall,
Birmingham, Alabama 35203,
Attorneys for Respondent.